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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff

71 CIV. 2877 (RLC)
(LAK)(MHD)

CHARLES BROWN,

Plaintiff-Intervenor,

-against-

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 580, et al.,

Defendants.

---x

NOTICE OF PLAINTIFF INTERVENOR CHARLES BROWN'S RULE 71 MOTION TO ENFORCE CONSENT DECREE AND AWARD DAMAGES

NOTICE OF PLAINTIFF-INTERVENOR CHARLES BROWN'S MOTION TO ENFORCE CONSENT DECREE AND CONTEMPT RULING PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 71 (FRCP 71) AND ADDITIONAL RELIEF IN THE NATURE OF AWARD OF TREBLED COMPENSATORY DAMAGES; BACK-PAY, RETROACTIVE PENSION, LOST WAGES, TUITION REINBUSRMENT, PROMOTION FUND, & INSURANCE FUND.

Charlie M Brown

Charles M. Brown
192 Country Club Lane
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(845)354-0036

TO:

JOHN S. GROARKE

ATTORNEY FOR DEFENDANT LOCAL 580

1225 FRANKLIN AVENUE

SUITE 450

GARDEN CITY, NY 11530

TO:

ATTORNEY LOUIS GRAZIANO

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

33 WHITE HALL STREET

NY, NY 10004-2112

---x

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff

71 CIV. 2877 (RLC)

CHARLES BROWN,

Plaintiff-Intervenor,

AFFIRMATION OF PLAINTIFF INTERVENOR BROWN IN SUPPORTOF HIS RULE 71 MOTION TO ENFORCE CONSENT DECREE AND AWARD DAMAGES

-against-

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 580, et al.,

Defendants.

---x

AFFIRMATION OF PLAINTIFF-INTERVENOR CHARLES BROWN IN SUPPORT OF HIS MOTION TO ENFORCE CONSENT DECREE AND CONTEMPT RULING PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 71 (FRCP 71) AND ADDITIONAL RELIEF IN THE NATURE OF AWARD OF TREBLED COMPENSATORY DAMAGES; BACK-PAY, RETROACTIVE PENSION, LOST WAGES, TUITION REINBUSRMENT, PROMOTION FUND, & INSURANCE FUND.

FACTS OF THE CASE

CHARLES BROWN, as plaintiff-intervenor Pro-se now appears and respectfully makes the following assertions:

1. Plaintiff respectfully brings to the attention of this court that the court issued a Consent Judgment on **July 20, 1978**, enjoining Local 580 from engaging in discriminatory practices and ordering the establishment of an affirmative action program. **See EEOC v. Local 580, et al**., No. 71 Civ. 2877 [Please see plaintiff's **exhibit A**]

2. On **September 11, 1987**, the court found Local 580 and its Joint Apprentice-Journeyman Education Fund ("AJEF") in contempt of court for non-compliance with the provisions of the Consent Judgment in operation of the apprenticeship program. **See EEOC v. Local 580, et al**., 669 F. Supp. 606 (S.D.N.Y. 1987) (Carter, J.), affirmed, 925 F.2d 588 (2d Cir. 1991).

3. On April 15, 1988, the court issued an order permanently enjoining Local 580 and the AJEF from discriminating against non-whites in the creation and operation of the apprenticeship program. **See EEOC v. Local 580, et al**, Corrected order (S.D.N.Y. May 3, 1988) (Carter, J.) [Please see **exhibit B**]

4. On December 16, 1988, the court found Local 580 and AJEF in contempt of court for non-compliance with provisions in the Consent Judgment relating to

journeyman workers. **See** **EEOC v. Local 580, et al**, 1988 WL 131293 (S.D.N.Y. Dec. 16. 1988) (Carter, J.) affirmed, 925 F.2d 588 (2d Cir. 1991).

5. On August 28, 1989, the Court ordered that the apprentice back pay hearings be expanded to include journeymen and applicants to the journeyman program who had been discriminated against by Local 580. **See** **EEOC v. Local 580, et al**, Index No. 71 Civ. 2877 (S.D.N.Y. August 28, 1989) (Carter, J.)

6. On December 6, 1991, the court granted final approval of the parties' settlement of **back pay claims**. **See** **EEOC v. Local 580, et al**, Index No. 71 Civ. 2877, Stipulation, Order and Judgment Pursuant to Federal Rule of Civil Procedure 54(b) Granting Final Approval of Settlement of Back Pay Claims (S.D.N.Y. Dec. 6, 1991) (Carter, J.)

7. On September 11, 1998, union members including plaintiff-intervenor, Brown, moved as alleged plaintiff-intervenors and as third party beneficiaries for an order finding Local 580 in civil contempt of the court's Consent Judgment and Apprentice and Journeyman Orders.

8. In a ruling handed down SO ORDERED by the Honorable Robert L. Carter, on April 18, 2001, the court granted intervenor status to Brown.

9. In the above referenced decision of April 18, 2001, approving the status of intervenor for plaintiff Brown, the court noted in part with respect to the language found in the consent judgments that, "*This language creates an additional*

mechanism for the resolution of grievances; it in no way limits the right of aggrieved third-party beneficiaries to bring their claims directly to the court."

10. The court reminded the parties that, "*the court will retain jurisdiction to assure compliance with this judgment.*"

11. On February 11, 1991, the United States Courts of Appeals for the 2nd Circuit in its decision affirming the contempt judgment and consent decree and outlining the inherent powers of the District courts regarding the enforcement of consent judgments opined that, "***In addition, the court has inherent power to enforce consent judgments, beyond the remedial "contractual" terms agreed upon by the parties. Unlike a private agreement, a consent judgment contemplates judicial interests apart from those of the litigants. Until parties to such an instrument have fulfilled their express obligations, the court has continuing authority and discretion—pursuant to its independent, juridical interests—to ensure compliance."***

12. The court further observed that, "***Local 580 has consistently avoided a precise chronicling of the comparative employment histories of white and non-white journeymen, as mandated by the consent judgment.***"

13. At a conference on April 13, 2007the procedure for Brown to have a hearing on the amount of his damage claims were established. [Please see **exhibit C**]

14. Thereafter on June 7, 2007, a pre-trial discovery conference was held which established a discovery schedule.

15. During the discovery period before the Honorable Michael H. Dolinger, plaintiff Brown completed the discovery demands on him by defendants and equally submitted a breakdown of his damages and other demands, which was memorialized at a hearing of April 22, 2009.

16. At the April 22, 2009 hearing Plaintiff-intervenor CHARLES BROWN reminded the court of the fact that his damages demand have been handed over to the defendants and to the court.

PRAYER FOR RELIEF IN THE NATURE OF AWARD OF TREBLED COMPENSATORY DAMAGES; BACK-PAY, RETROACTIVE PENSION, LOST WAGES, TUITION REINBUSRMENT, PROMOTION FUND, & INSURANCE FUND.

17. Wherefore Plaintiff-intervenor now respectfully prays this court to enforce the consent judgment by awarding him the relief of compensatory damages; back-pay, retroactive pension, lost wages, tuition reimbursement, promotion fund and insurance fund.

18. A trial court retains jurisdiction to enforce consent decrees. **See** ***Beckett v. Air Line Pilots Ass'n***, 995 F.2d 280, 286 (D.C.Cir.1993); ***Hook v. Arizona***, 972 F.2d 1012, 1014 (9th Cir.1992); ***Picon v. Morris***, 933 F.2d 660, 662 (8th Cir.1991).

19. As a corollary, intended third-party beneficiaries of consent decrees have standing to enforce those decrees. **See** *Beckett,* 995 F.2d at 286; *Hook,* 972 F.2d at 1014; *Berger v. Heckler,* 771 F.2d 1556, 1565-66 (2d Cir. 1985). *But see Aiken v. City of Memphis,* 37 F.3d 1155, 1168 (6th Cir.1994) (relying on *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 750, 95 S.Ct. 1917, 44 L.Ed.2d 539 (1975).

20. Plaintiff hereby prays the court to award it the sum of **$2,113,231.94 million dollars (two million one hundred and thirteen thousand two hundred & thirty-one dollars and ninety-four cents.)** being the total of his compensatory damages; retro pension, lost wages, tuition reimbursement, promotion fund, & insurance fund. When the said amount is **trebled** the total becomes **$6,339,695.82** (The breakdown is carefully documented in plaintiff's **exhibit D**)

21. Plaintiff respectfully appeals to the court to intervene so that this matter can be brought to an amicable conclusion.

CONCLUSION

WHEREFORE, plaintiff-intervenor CHARLES BROWN respectfully request that the court should grant his motion and enforce the consent decree and contempt judgment against defendants and award him trebled compensatory damages in the amount of **$6,339,695.82,** which he has been unlawfully and illegally denied by defendants and such other relief as the court may deem proper and just.

Dated: Pomona, New York

March 20, 2010

Charles M. Brown

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(845)354-0036

TO:

JOHN S. GROARKE

ATTORNEY FOR DEFENDANT LOCAL 580

1225 FRANKLIN AVENUE

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TO:

ATTORNEY LOUIS GRAZIANO

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

33 WHITE HALL STREET

NY, NY 10004-2112

March 28, 2010

E.E.O.C Charlie Brown Intervener
Pro-se, Plaintiff
192 Shady Brook Lane
Pomona, N.Y.10970

Case #71civ 2877

VS: Defendant Local 580

Hon. Michael H. Dolinger
US Magistrate US Courthouse
500 Pearl Street Rm1670
New York, N.Y.10007

Dear Hon Dolinger;

This is an amended motion to enforce the consent and agreement and contempt of court order.

The first motion of enforcement by intervener -pro-se, was placed before this court on April 22, 2009. Enclose please find copies of my social security statement and IRS copies for all the years I'm claiming damage.

Sincerely Yours

Charlie M Brown

cc:
U.S District Court, Southern Dist

John S. Groarke

E.E.O.C. Louis Grazano